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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 RAPHAEL HENSON,

10 Plaintiff,

11 Case No. C17-1885-RSM-JPD

12 v.

13 KING COUNTY JAIL, *et al.*,

14 Defendants.

15 ORDER DENYING PLAINTIFF'S
16 MOTIONS FOR LEAVE TO AMEND
17 AND FOR RULE 26(f) MEETING

18 This is a civil rights action brought under 42 U.S.C. § 1983. Currently pending before
19 the Court are plaintiff's two motions for leave to file an amended complaint, and a motion for a
20 Rule 26(f) meeting with defendants' counsel. The Court having reviewed these motions, and the
21 balance of the record, hereby ORDERS as follows:

22 (1) Plaintiff's motion for leave to file an amended complaint to add a party (Dkt. 44)
23 is DENIED. Plaintiff, in the first of his two recently filed motions to amend, indicates that he
 misidentified one of his intended defendants, naming Sergeant Jensen instead of Sergeant Jellen,
 and he seeks leave to amend his complaint to substitute Sergeant Jellen for Sergeant Jensen.
 Plaintiff failed to submit with his motion to amend a proposed amended complaint as is required

24
25 ORDER DENYING PLAINTIFF'S
26 MOTIONS FOR LEAVE TO AMEND
27 AND FOR RULE 26(f) MEETING - 1

1 Local Civil Rule (LCR) 15. Plaintiff should have been aware of this requirement because he was
2 previously advised that in order to substitute Sergeant Jellen for Sergeant Jensen he would have
3 to file a motion to amend his complaint together with a proposed second amended complaint
4 identifying the proper defendant. (Dkt. 45 at 2.) Plaintiff was also advised that the record would
5 continue to reflect the defendant originally identified by plaintiff until he properly corrected the
6 record. (*Id.*) In sum, plaintiff's motion to amend complies with neither the local rules of this
7 Court nor with this Court's prior order.

8 Defendants, in their response to plaintiff's motion, note plaintiff's failure to submit a
9 proposed amended complaint and attempt to assist plaintiff in correcting the record by
10 submitting a proposed second amended complaint with their response. (See Dkt. 48, Ex. 1.)
11 This proposed amended pleading is simply a typewritten copy of plaintiff's first amended
12 complaint with the name Jensen changed to Jellen. Defendants ask the Court to accept the
13 proposed second amended complaint, to direct service on Sergeant Jellen, and to dismiss
14 Sergeant Jenson.

15 While the Court understands defendants' desire to move this case forward by undertaking
16 a task which plaintiff should have done himself, the proposed pleading submitted by defendants
17 cannot be accepted for filing because it does not bear plaintiff's signature. If plaintiff wishes to
18 proceed against Sergeant Jellen in this action, he may do so by signing the proposed second
19 amended complaint prepared by defendants' counsel and submitting it to the Court filing.
20 Plaintiff may, in the alternative, submit his own proposed second amended complaint asserting
21 viable claims against any intended defendants. This action will not move forward against
22 Sergeant Jellen if plaintiff does not choose one of these two options.

23 ORDER DENYING PLAINTIFF'S
MOTIONS FOR LEAVE TO AMEND
AND FOR RULE 26(f) MEETING - 2

1 (2) Plaintiff's motion for leave to file an amended complaint to add legal claims (Dkt.
2 49) is DENIED. Though the precise nature of plaintiff's proposed new claims is somewhat
3 unclear, he appears to allege that he is being falsely imprisoned, that his Fourth Amendment
4 right to be free from unlawful searches and seizures was violated, that his due process right to
5 represent himself was violated, and that he has been subject to cruel and unusual punishment
6 based on the conduct of defendants. As with his first motion to amend, plaintiff also failed to
7 submit a proposed amended complaint with his second motion to amend. While plaintiff's
8 second motion to amend somewhat resembles an amended pleading, the claims set forth therein
9 do not state any viable cause of action against any defendant or proposed defendant and, thus, it
10 would serve no purpose to construe the motion as an amended complaint.

11 Plaintiff's proposed new claims appear to constitute a challenge to his conviction and
12 sentence in the King County Superior Court criminal action which is the basis of his current
13 confinement. Where a prisoner challenges the fact or duration of his confinement, his sole
14 federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973).
15 In *Heck v. Humphrey*, 512 U.S. 477 (1994), the United States Supreme Court held that a § 1983
16 claim that calls into question the lawfulness of a prisoner's conviction or confinement does not
17 accrue "unless and until the conviction or sentence is reversed, expunged, invalidated, or
18 impugned by the grant of a writ of habeas corpus." *Heck*, 512 U.S. at 489.

19 Any claim that plaintiff's constitutional rights were violated during the course of his
20 criminal proceedings would, if resolved in plaintiff's favor, necessarily call into question the
21 lawfulness of his conviction and/or sentence. Nothing in the record suggests that the conviction
22 or sentence which plaintiff apparently seeks to challenge has been overturned and, thus, it

23 ORDER DENYING PLAINTIFF'S
MOTIONS FOR LEAVE TO AMEND
AND FOR RULE 26(f) MEETING - 3

1 appears likely that plaintiff's proposed new claims are barred by *Heck*. Plaintiff therefore will
2 not be permitted to amend his complaint to add such claims.

3 (3) Plaintiff's motion for a Rule 26(f) meeting (Dkt. 50) is DENIED. Plaintiff
4 requests in his motion that defendants' counsel engage in settlement negotiations with him.
5 Defendants, in their response to plaintiff's motion, note that this proceeding is exempt from the
6 requirement that the parties hold a Rule 26(f) conference. *See Fed. R. Civ. P. 26(a)(1)(B)(iii)*
7 and (iv); Fed. R. Civ. P. 26(f)(1). Defendants further note that they have already sent plaintiff a
8 letter responding to his request for settlement negotiations so there is no need for a Rule 26(f)
9 conference. (*See Dkt. 52, Ex. A.*) It is not clear that plaintiff has actually requested any relief
10 from the Court in the instant motion. However, to the extent plaintiff's motion might be
11 construed as a request to compel defendants to participate in a Rule 26(f) conference, his motion
12 must be denied as this proceeding is exempt from the Rule 26(f) requirements.

13 (4) The Clerk shall send plaintiff a copy of the declaration of counsel which was
14 submitted in support of defendants' response to plaintiff's first motion to amend and contains the
15 proposed second amended complaint drafted by counsel. (Dkt. 48.) The Clerk is further directed
16 to send copies of this Order to plaintiff, to counsel for defendants, and to the Honorable Ricardo
17 S. Martinez.

18 DATED this 20th day of August, 2018.

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20 JAMES P. DONOHUE
21 United States Magistrate Judge

22
23 ORDER DENYING PLAINTIFF'S
MOTIONS FOR LEAVE TO AMEND
AND FOR RULE 26(f) MEETING - 4